

ASSEMBLY BILL

No. 2166

Introduced by Assembly Member Tran

February 20, 2008

An act to amend Section 1306 of, and to add Section 1305.5 to, the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 2166, as introduced, Tran. Bail forfeiture: appeals.

Under existing law, if a criminal defendant has been released on bail and then fails to appear in court when required, the bail may subsequently be forfeited according to a specified procedure. Existing law provides for the appeal of an order relating to bail forfeiture.

This bill would set forth the rules that would apply if there is an appeal from an order of the superior court on a motion to vacate a bail forfeiture.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1305.5 is added to the Penal Code, to
- 2 read:
- 3 1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2
- 4 of the Code of Civil Procedure, if the people, a surety, or other
- 5 person appeals from an order of the superior court on a motion to
- 6 vacate a bail forfeiture declared under Section 1305, the following
- 7 rules apply:

1 (a) If the bail forfeiture was in a felony case, or in a case in
2 which both a felony and a misdemeanor were charged, and the
3 forfeiture occurred at or after the sentencing hearing or after the
4 indictment or the legal commitment by a magistrate, the appeal is
5 to the court of appeal and it shall be treated as an unlimited civil
6 case, regardless of the amount of bail.

7 (b) If the bail forfeiture was in a felony case, or in a case in
8 which both a felony and a misdemeanor were charged, and the
9 forfeiture occurred at the preliminary hearing or at another
10 proceeding before the legal commitment by a magistrate, the appeal
11 is to the appellate division of the superior court and it shall be
12 treated as a limited civil case, regardless of the amount of bail.

13 (c) If the bail forfeiture was in a misdemeanor case, the appeal
14 is to the appellate division of the superior court and it shall be
15 treated as a limited civil case, regardless of the amount of bail.

16 SEC. 2. Section 1306 of the Penal Code is amended to read:

17 1306. (a) When any bond is forfeited and the period of time
18 specified in Section 1305 has elapsed without the forfeiture having
19 been set aside, the court which has declared the forfeiture;
20 ~~regardless of the amount of the bail;~~ shall enter a summary
21 judgment against each bondsman named in the bond in the amount
22 for which the bondsman is bound. The judgment shall be the
23 amount of the bond plus costs, and notwithstanding any other law,
24 no penalty assessments shall be levied or added to the judgment.

25 (b) If a court grants relief from bail forfeiture, it shall impose a
26 monetary payment as a condition of relief to compensate the people
27 for the costs of returning a defendant to custody pursuant to Section
28 1305, except for cases where the court determines that in the best
29 interest of justice no costs should be imposed. The amount imposed
30 shall reflect the actual costs of returning the defendant to custody.
31 Failure to act within the required time to make the payment
32 imposed pursuant to this subdivision shall not be the basis for a
33 summary judgment against any or all of the underlying amount of
34 the bail. A summary judgment entered for failure to make the
35 payment imposed under this subdivision is subject to the provisions
36 of Section 1308, and shall apply only to the amount of the costs
37 owing at the time the summary judgment is entered, plus
38 administrative costs and ~~interests~~ *interest*.

39 (c) If, because of the failure of any court to promptly perform
40 the duties enjoined upon it pursuant to this section, summary

1 judgment is not entered within 90 days after the date upon which
2 it may first be entered, the right to do so expires and the bail is
3 exonerated.

4 (d) A dismissal of the complaint, indictment, or information
5 after the default of the defendant shall not release or affect the
6 obligation of the bail bond or undertaking.

7 (e) The district attorney or county counsel shall:

8 (1) Demand immediate payment of the judgment within 30 days
9 after the summary judgment becomes final.

10 (2) If the judgment remains unpaid for a period of 20 days after
11 demand has been made, shall forthwith enforce the judgment in
12 the manner provided for enforcement of money judgments
13 generally. If the judgment is appealed by the surety or bondsman,
14 the undertaking required to be given in these cases shall be
15 provided by a surety other than the one filing the appeal. The
16 undertaking shall comply with the enforcement requirements of
17 Section 917.1 of the Code of Civil Procedure. *Notwithstanding*
18 *Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure,*
19 *jurisdiction of the appeal, and treatment of the appeal as a limited*
20 *civil case or an unlimited civil case, is governed by Section 1305.5.*

21 (f) The right to enforce a summary judgment entered against a
22 bondsman pursuant to this section shall expire two years after the
23 entry of the judgment.